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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To maintain the free flow of information to the public by providing conditions
for the federally compelled disclosure of information by certain persons
connected with the news media.

IN THE HOUSE OF REPRESENTATIVES

Mr. PENCE (for himself and Mr. BOUCHER) introduced the following bill;
which was referred to the Committee on _____

A BILL

To maintain the free flow of information to the public by
providing conditions for the federally compelled disclosure
of information by certain persons connected with the
news media.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Flow of Informa-
5 tion Act of 2005”.



1 **SEC. 2. CONDITIONS FOR COMPELLED DISCLOSURE.**

2 (a) CONDITIONS FOR COMPELLED DISCLOSURE.—No
3 Federal entity may compel a covered person to testify or
4 produce any document in any proceeding or in connection
5 with any issue arising under Federal law unless a court
6 determines by clear and convincing evidence, after pro-
7 viding notice and an opportunity to be heard to the cov-
8 ered person—

9 (1) that the entity has unsuccessfully attempted
10 to obtain such testimony or document from all per-
11 sons from which such testimony or document could
12 reasonably be obtained other than a covered person;
13 and

14 (2) that—

15 (A) in a criminal investigation or prosecu-
16 tion, based on information obtained from a per-
17 son other than a covered person—

18 (i) there are reasonable grounds to be-
19 lieve that a crime has occurred; and

20 (ii) the testimony or document sought
21 is essential to the investigation, prosecu-
22 tion, or defense; or

23 (B) in a matter other than a criminal in-
24 vestigation or prosecution, based on information
25 obtained from a person other than a covered
26 person, the testimony or document sought is es-



1 sential to a dispositive issue of substantial im-
2 portance to that matter.

3 (b) LIMITATIONS ON CONTENT OF INFORMATION.—

4 The content of any testimony or document that is com-
5 pelled under subsection (a) shall, to the extent possible—

6 (1) be limited to the purpose of verifying pub-
7 lished information or describing any surrounding cir-
8 cumstances relevant to the accuracy of such pub-
9 lished information; and

10 (2) be narrowly tailored in subject matter and
11 period of time covered.

12 **SEC. 3. COMMERCIAL OR FINANCIAL INFORMATION.**

13 The provisions of section 2 do not apply to a request
14 by a Federal entity for any testimony or document that
15 consists of only commercial or financial information unre-
16 lated to newsgathering or news and information dissemi-
17 nation by a covered person.

18 **SEC. 4. COMPELLED DISCLOSURE PROHIBITED.**

19 Notwithstanding any provision of section 2, in any
20 proceeding or in connection with any issue arising under
21 Federal law, no Federal entity may compel a covered per-
22 son to disclose—

23 (1) the identity of a source of information—

24 (A) from whom the covered person ob-
25 tained information; and



1 (B) who the covered person believes to be
2 a confidential source; or

3 (2) any information that could reasonably be
4 expected to lead to the discovery of the identity of
5 such a source.

6 **SEC. 5. COMPELLED DISCLOSURE FROM THIRD PARTIES.**

7 (a) CONDITIONS FOR COMPELLED DISCLOSURE.—

8 The provisions of sections 2, 3, and 4 shall apply to any
9 testimony or document that a Federal entity seeks from
10 a third party if such testimony or document consists of
11 any record, information, or other communication that re-
12 lates to a business transaction between such third party
13 and a covered person. Such record, information, or other
14 communication includes any telephone record or other
15 record held by a telecommunications service provider,
16 Internet service provider, or operator of an interactive
17 computer service for a business purpose.

18 (b) NOTICE AND OPPORTUNITY PROVIDED TO COV-
19 ERED PERSONS.—A court may compel the testimony or
20 disclosure of a document under this section only after the
21 party seeking such a document provides the covered per-
22 son who is a party to the business transaction described
23 in subsection (a)—

24 (1) notice of the subpoena or other compulsory
25 request for such testimony or disclosure from the



1 third party not later than the time at which such
2 subpoena or request is issued to the third party; and

3 (2) an opportunity to be heard before the court
4 before the time at which the testimony or disclosure
5 is compelled.

6 (c) EXCEPTION TO NOTICE REQUIREMENT.—Notice
7 under subsection (b)(1) may be delayed only if the court
8 determines by clear and convincing evidence that such no-
9 tice would pose a substantial threat to the integrity of a
10 criminal investigation.

11 **SEC. 6. ACTIVITIES NOT CONSTITUTING A WAIVER.**

12 The publication or dissemination of any testimony or
13 document (or portion of such testimony or document)
14 sought under section 2 shall not waive the requirements
15 of such section. The publication or dissemination of any
16 testimony or document (or portion of such testimony or
17 document), identity, or information described in section 4
18 shall not waive the prohibition described in such section.

19 **SEC. 7. DEFINITIONS.**

20 In this Act:

21 (1) The term “covered person” means—

22 (A) an entity that disseminates informa-
23 tion by print, broadcast, cable, satellite, me-
24 chanical, photographic, electronic, or other
25 means and that—



1 (i) publishes a newspaper, book, mag-
2 azine, or other periodical;

3 (ii) operates a radio or television
4 broadcast station (or network of such sta-
5 tions), cable system, or satellite carrier, or
6 a channel or programming service for any
7 such station, network, system, or carrier;
8 or

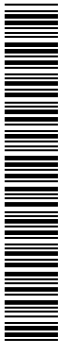
9 (iii) operates a news agency or wire
10 service;

11 (B) a parent, subsidiary, or affiliate of
12 such an entity; or

13 (C) an employee, contractor, or other per-
14 son who gathers, edits, photographs, records,
15 prepares, or disseminates news or information
16 for such an entity.

17 (2) The term “document” means writings, re-
18 cordings, and photographs, as those terms are de-
19 fined by Federal Rule of Evidence 1001 (28 U.S.C.
20 App.).

21 (3) The term “Federal entity” means an entity
22 or employee of the judicial, legislative, or executive
23 branch of the Federal Government with the power to
24 issue a subpoena or provide other compulsory proc-
25 ess.



1 (4) The term “third party” means a person
2 other than a covered person.

